

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 OCT 26 AM 10:36

JEAN L. HARRIS, CLERK

BY: Chamberlain

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9
10 **IN THE SUPERIOR COURT**

11 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

12 STATE OF ARIZONA,

V1300CR201080049

13 Plaintiff,

**STATE'S MOTION IN LIMINE
RE: PRETRIAL ISSUES**

14 vs.

(Oral Argument Requested)

15 JAMES ARTHUR RAY,

Division PTB

16 Defendant.

17 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, respectfully
18 requests oral argument and pretrial rulings to resolve the issues identified below. Resolution of
19 these issues prior to commencement of the trial will minimize interruption of the presentation of
20 the case to the jury and the number of days necessary to try the case. The issues for which the
21 State requests a pretrial ruling are:

- 22 (A) Preclusion of any reference to a "perp walk"
- 23 (B) Preclusion of any reference to the bail amount and argument at bail hearings
- 24 (C) Preclusion of any improper comment and/or characterization of the preindictment
25 meeting between the prosecutors, law enforcement and the medical examiners, or
26 issues surrounding the Defendant's Motion to Compel

- 1 (D) Preclusion of any mention of possible sentence if Defendant is convicted
- 2 (E) Preclusion of examining witnesses regarding private or sensitive personal
- 3 information revealed during the 2009 Spiritual Warrior Seminar

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5

6 **I. THE FACTS**

7 On October 8, 2009, Yavapai County Sheriff's Office responded to the Angel Valley

8 Retreat in Sedona, Arizona, for a report of numerous people in various stages of medical distress.

9 Upon arrival, detectives were informed two persons had died after being transported to the Verde

10 Valley Medical Center and other individuals were in altered levels of consciousness and having

11 difficulty breathing.

12 The subsequent investigation revealed the deaths occurred after approximately 56 people

13 took part in a two-hour ceremony in a sweat lodge. In addition to James Shore and Kirby Brown,

14 the two people who died, numerous others were hospitalized. On October 17, 2009, a third

15 participant, Liz Neuman, died.

16

17 During the 2009 sweat lodge event, as participants began to advise Defendant of medical

18 problems inside the sweat lodge, Defendant advised those in distress to remain inside the lodge

19 until he concluded that round of the event. When told that participants had passed out inside,

20 Defendant advised the other participants they would be fine. Several participants will testify that

21 when they tried to leave the sweat lodge, Defendant told them to stay inside. Defendant controlled

22 the amount of heat inside the sweat lodge, while sitting in the coolest location of the sweat lodge

23 and while Defendant occasionally cooled himself with water he kept nearby. As a result of the

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1 extreme heat and other conditions controlled by Defendant inside the sweat lodge, Kirby Brown,
2 Elizabeth Neuman, and James Shore died.

3 The ceremony was part of a five-day seminar titled "Spiritual Warrior" sponsored by James
4 Arthur Ray. The Yavapai County Sheriff's Office originally initiated an accidental death
5 investigation. The investigation was subsequently upgraded to a homicide investigation.
6

7 The investigation established Defendant had conducted prior sweat lodge events, and
8 knew participants in those prior sweat lodge events had suffered adverse medical problems during
9 the sweat lodge event, including at least one prior participant in 2005 who required
10 hospitalization. Despite that knowledge, Defendant continued to operate the lucrative¹ sweat
11 lodge events, and assured participants that although they might feel like they were going to die
12 inside the sweat lodge, they would not. Defendant also discouraged participants from helping
13 others inside the sweat lodge, assuring the participants that Defendant's staff would provide any
14 necessary assistance.
15

16 On February 3, 2010, the Yavapai County Grand Jury indicted Defendant on three
17 counts of manslaughter for the deaths of victims Kirby Brown, James Shore and Elizabeth
18 Neuman.

19 II. LEGAL ARGUMENT

20 The Law:

21 Relevant Evidence:

22 Under Rule 401, Ariz. R. Evid., "relevant evidence means evidence "having any tendency
23 to make the existence of any fact that is of consequence to the determination of the action more
24

25 ¹ Approximately 47 paying participants were in the 2009 sweat lodge event, many paying
26 Defendant up to \$10,000 to attend. A total of 56 people were inside the 2009 sweat lodge.

1 probable or less probable than it would be without the evidence.” For evidence to be relevant there
2 must be a “reasonable connection” between the evidence and the current issue or charge. *State v.*
3 *ex rel. Pope v. Superior Court*, 113 Ariz. 22, 26. 545 P.2d 946, 950 (1976) (citing *State v.*
4 *Wayman*, 104 Ariz. 125, 449 P.2d 296 (1969)). “Evidence which is not relevant is not
5 admissible.” Ariz. R. Evid. Rule 402.
6

7 Rule 401 defines "relevant evidence" as evidence "having any tendency to make the
8 existence of any fact that is of consequence . . . more probable or less probable than it would be
9 without the evidence." *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071 (1988). (emphasis added.)
10 This standard of relevance is not particularly high. *Id.* Rule 402 provides that all relevant evidence is
11 admissible unless that evidence is excludable on some other grounds. Pursuant to Rule 403, some
12 relevant evidence "may be excluded if its probative value is substantially outweighed by the danger
13 of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue
14 delay, waste of time, or needless presentation of cumulative evidence." (emphasis added.)
15

16 **Pretrial Issues:**

17 **(A) Defendant’s alleged “perp walk” is not relevant and should be precluded.**

18 On June 16, 2010, Defendant’s counsel interviewed Yavapai County Sheriff’s Office
19 Detectives Ross Disken, Michael Poling and Thomas Boelts. At each interview, Defendant’s
20 counsel questioned the detectives about how the Defendant was transported and subsequently
21 walked into the Verde Jail facility following his arrest in Prescott. Defendant’s counsel repeatedly
22 referred to these events as a “perp walk” and seemed focused on determining who made the
23 decision to take the Defendant through the front door of the jail rather than through the “sally
24 port” where he would be less visible to the media.
25
26

1 The method of transporting an arrested defendant to the jail and into the booking facility is
2 irrelevant to the issue of a defendant's guilt or innocence. In the instant case, Defendant has been
3 charged with three counts of manslaughter for the deaths of victims Kirby Brown, James Shore
4 and Elizabeth Neuman after they participated in a sweat lodge ceremony conducted by
5 Defendant on October 8, 2009. In order to prove the charges the State must show the victims
6 were killed as a result of Defendant's recklessness. The fact that Defendant was photographed
7 in what he describes as a "perp walk" is not relevant to the issues in this case. Pursuant to Rule
8 401, Ariz. R. Evid., the State requests this Court preclude any reference to a "perp walk" from
9 being presented to the jury.
10

11 **(B) The amount of Defendant's bail and/or evidence presented during the bail**
12 **hearing is not relevant and should be precluded.**
13

14 Following Defendant's arrest, this Court heard two days of argument relating
15 Defendant's request to reduce the bail amount set by the Court following the Grand Jury
16 Indictment. The amount of Defendant's initial bail and/or his current bail is irrelevant to the
17 issue of Defendant's guilt or innocence. Similarly, the argument/evidence presented to this
18 Court relating to Defendant's financial status is also irrelevant. Pursuant to Rule 401, Ariz. R.
19 Evid., the State requests this Court preclude any reference to Defendant's bail and/or the evidence
20 presented during the bail hearing from being presented to the jury.
21

22 The State does assert evidence of the cost of the seminars and the financial practices of
23 James Ray International is relevant and should be admitted. This issue has been previously
24 briefed in the State's Response to Defendant's Motion in Limine (No. 2) to Exclude Evidence
25
26

1 of Defendant's Financial Condition and Business Practices Pursuant to Ariz. R. Evid. 403 and
2 404.

3 **(C) The preindictment meeting between the prosecution, law enforcement and the**
4 **medical examiners is not relevant and should be precluded.**

5 On December 14, 2009, the State met with YCSO investigators and representatives from
6 the Maricopa and Coconino County Medical Examiners' Offices. The meeting was held to
7 discuss the investigation into the events leading to the three deaths and to discuss possible
8 criminal charges.
9

10 Defendant was indicted on February 3, 2010, almost 3 months after the meeting. On
11 September 20, 2010, this Court ruled the State was required to disclose a PowerPoint
12 presentation and notes summarizing statements of the medical examiners. Notwithstanding this
13 Court's ruling, Defendant should be precluded from making any improper comments or
14 characterizations relating to the meeting itself, or any references to the subject matter or
15 arguments made in the Motion to Compel, Response and Reply. The PowerPoint presentation
16 itself may be relevant, but not the arguments surrounding its disclosure.
17

18 **(D) Preclusion of any reference to possible sentence.**

19 The State requests Defendant be precluded from mentioning anything to the jury
20 concerning the possible penalty or sentence the trial judge could impose in this case. In *State v.*
21 *Koch*, 138 Ariz. 99, 673 P.2d 297 (1983), the Arizona Supreme Court stated courts should not
22 advise the jury concerning the potential punishment a defendant faces upon conviction. The Court
23 stated:
24

25 In a criminal trial in Arizona, the exclusive function of the jury is to
26 determine whether the defendant is guilty or not guilty. The trial

1 court determines matters of punishment. "A defendant is entitled to
2 a fair trial and to a verdict of a jury upon the evidence without
3 consideration of the punishment inflicted." *State v. Burnetts*, 80
4 Ariz. 208, 212, 295 P.2d 377, 379 (1956).

5 *Koch*, at 105, 673 P.2d at 303.

6 In *State v. Olsen*, 157 Ariz. 603, 608, 760 P.2d 603, 608 (App. 1988), the Court of
7 Appeals explained, "Although jurors may be influenced by the punishment that might be meted
8 out as a result of their verdict, decisions in Arizona have long held that such matters are 'none
9 of their concern.' *State v. Burnetts*, 80 Ariz. at 212, 295 P.2d at 379." The *Olsen* Court went on
10 to state, "[t]o allow the jury to consider the possible punishment would be to allow them to base
11 their decision on sympathy, passion or prejudice. Such a basis for a verdict would clearly be
12 improper." *State v. Olsen*, *Id.* Therefore, the State asks this Court to preclude Defendant from
13 any mention of the possible punishment the Court may impose on Defendant if he is convicted.

14 **(E) All parties should be precluded from examining witnesses regarding private or**
15 **sensitive personal information revealed to Defendant during the 2009 Spiritual Warrior**
16 **Seminar or mentioned in the departmental report and supplements.**

17 According to the James Ray International Event Matrix, Spiritual Warrior is designed to
18 attract participants "with a deep need to heal themselves, and in most cases a traumatic
19 experienced [sic] that occurred to live more freely and not live heavily as a prisoner of their
20 past." *James Ray International Event Matrix*, Bates No. 5097. During the law enforcement
21 interviews with participants, some participants indicated they had been victims of some type of
22 abuse as a child. One participant indicated she had revealed incidents of abuse to Defendant
23 during Spiritual Warrior and was concerned she would be questioned regarding this information
24 during trial.
25
26

1 This type of private or sensitive information relating is not relevant and would only
2 serve to embarrass and cause undo stress to the witnesses. Accordingly, the State moves this
3 Court to preclude all parties from examining witnesses regarding private or sensitive
4 information they may have revealed to Defendant while participating in Spiritual Warrior.
5

6 RESPECTFULLY submitted this 26th day of October, 2010.

7
8 By Sheila Sullivan Polk
9 SHEILA SULLIVAN POLK
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11

12 **COPIES** of the foregoing emailed this
13 26th day of October, 2010:

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COPIES of the foregoing delivered this
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